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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 UNITED STATES OF AMERICA,  
12  
13 vs. Plaintiff-Respondent,  
14 OMAR MURILLO,  
15 Defendant-Petitioner.

CASE NO. 11CR5605-L

ORDER DENYING IN PART AND  
GRANTING IN PART  
PETITIONER'S MOTION

16 Petitioner Omar Murillo, ("Petitioner") filed a motion seeking to dismiss his counsel of record;  
17 requesting that this Court order counsel to provide a copy of Petitioner's case record to him; and  
18 requesting that the Court provide him with the form for filing a motion pursuant to 28 U.S.C. § 2255.

19 A review of the record indicates that Petitioner pled guilty to one count of Importation of  
20 Methamphetamine and one count of Importation of Heroin in violation of 21 U.S.C. §§ 952 and 960.  
21 [Doc. 43.] As part of his plea agreement, Petitioner waived his right to appeal or collaterally attack  
22 his sentence or conviction, [doc. 19, at 11-12], and final judgment was filed in his case on May 2,  
23 2012. Therefore, there is no need to dismiss counsel as Petitioner is not represented at this time.  
24 Petitioner or his family may contact his former counsel and request copies of his records.


25 To the extent that Petitioner's pleading may be construed as a motion seeking documents and  
26 transcripts at the Government's expense, he is only entitled to those items after filing a post-conviction  
27 motion. Title 28 U.S.C. § 753(f) provides that fees for transcripts furnished in proceedings brought  
28 under § 2255 to persons permitted to sue or appeal in forma pauperis shall be paid by the United States

1 out of money appropriated for that purpose if the trial judge certifies that the suit or appeal is not  
2 frivolous and that the transcript is needed to decide the issue presented by the suit or appeal. 28  
3 U.S.C. §§ 753(f). Section 2250 provides, “if on any application for a writ of habeas corpus an order  
4 has been made permitting the petitioner to prosecute the application in forma pauperis, the clerk of  
5 any court of the United States shall furnish to the petitioner without cost certified copies of such  
6 documents or parts of the record on file in his office as may be required by order of the judge before  
7 whom the application is pending.” 28 U.S.C. § 2250. Transcripts are only provided at government  
8 expense upon a showing of a particularized need for them. *See United States v. MacCollom*, 426 U.S.  
9 317, 323-30 (1976).

10 Accordingly, Petitioner’s motion to dismiss counsel of record and to order former counsel to  
11 provide documents is DENIED; Petitioner’s request for a § 2255 form is GRANTED. The Clerk of  
12 Court shall provide Petitioner any forms required for the filing of a motion under 28 U.S.C. § 2255.

13 IT IS SO ORDERED.

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15 DATED: October 12, 2012

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17 M. James Lorenz  
18 United States District Court Judge  
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